

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Trevor Hackett	Team: Squad #13	CCRB Case #: 201904461	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 01/24/2019 7:08 PM	Location of Incident: § 87(2)(b) [REDACTED]	Precinct: 44	18 Mo. SOL 7/24/2020	EO SOL 3/10/2021	
Date/Time CV Reported Wed, 05/22/2019 4:17 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 05/22/2019 4:17 PM		

Complainant/Victim	Type	Home Address
[REDACTED]	[REDACTED]	[REDACTED]

Witness(es)	Home Address
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

Subject Officer(s)	Shield	TaxID	Command
1. POM Brian Garcia	30586	954846	044 PCT
2. SGT Timothy Burke	03879	950130	044 PCT
3. POM Patrick Leone	20045	925610	044 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ryan Brady	03653	964402	044 PCT
2. POM Christophe Alvarado	06589	961611	044 PCT
3. POM Scott Ferguson	22891	957576	044 PCT
4. POM Johnathon Concepcion	06198	948804	044 PCT
5. POF Judith Marrero	24353	962580	044 PCT
6. POM Miguel Castillo	00985	965682	044 PCT
7. POM Xavier Fernandez	15760	957582	044 PCT
8. POM Uriel Lames	20159	958788	044 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian Garcia	Abuse: Police Officer Brian Garcia entered § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
B.POM Patrick Leone	Abuse: Police Officer Patrick Leone entered § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
C.POM Brian Garcia	Abuse: Police Officer Brian Garcia searched § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
D.POM Patrick Leone	Abuse: Police Officer Patrick Leone searched § 87(2)(b) [REDACTED] in the Bronx.	[REDACTED]
E.POM Brian Garcia	Force: Police Officer Brian Garcia used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
F.POM Patrick Leone	Force: Police Officer Patrick Leone used physical force against § 87(2)(b) [REDACTED]	[REDACTED]
G.SGT Timothy Burke	Force: Sergeant Timothy Burke used a Taser against § 87(2)(b) [REDACTED]	[REDACTED]

Officer(s)	Allegation	Investigator Recommendation
§ 87(4-b), § 87(2)(g)		

Case Summary

On May 5, 2019, § 87(2)(b) filed this complaint in-person at the CCRB.

On January 24, 2019, at approximately at 7:08 p.m., § 87(2)(b) was home at § 87(2)(b) in the Bronx. Police Officer Brian Garcia and Police Officer Patrick Leone, both of the 44th Precinct, entered the apartment to find and arrest § 87(2)(b).

§ 87(2)(b) (**Allegations A, B, C, and D – Abuse of Authority,** § 87(2)(g) Sergeant Timothy Burke, and additional officers, all of the 44th Precinct, arrived. Soon after, PO Garcia and PO Leone used physical force against § 87(2)(b) (**Allegations E and F – Physical Force,** § 87(2)(g) and Sgt. Burke tased her (**Allegation G – Force,** § 87(2)(g) § 87(2)(b) was handcuffed, arrested, and ultimately charged with § 87(2)(b).

§ 87(4-b), § 87(2)(g)
§ 87(2)(b)
§ 87(2)(b)
§ 87(2)(b)

[§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]
§ 87(2)(b)

Body Worn Camera footage was obtained from Sgt. Burke, PO Garcia, Police Officer Ryan Brady, Police Officer Christopher Alvarado, Police Officer Scott Ferguson, Police Officer Johnathan Concepcion, Police Officer Judith Marrero, Police Officer Miguel Castillo, Police Officer Xavier Fernandez, and Police Officer Uriel Lames, all of the 44th Precinct (**Board Review 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12**). This footage is located in IAs #36 – 46 and summarized in IA #80 (**Board Review 13**).

Findings and Recommendations

Allegation A – Abuse of Authority: Police Officer Brian Garcia entered § 87(2)(b) **in the Bronx.**

Allegation B – Abuse of Authority: Police Officer Patrick Leone entered § 87(2)(b) **in the Bronx.**

Allegation C – Abuse of Authority: Police Officer Brian Garcia searched § 87(2)(b) **in the Bronx.**

Allegation D – Abuse of Authority: Police Officer Patrick Leone searched § 87(2)(b) **in the Bronx.**

§ 87(2)(b) stated that after she and her sister, § 87(2)(b) engaged in a verbal dispute, § 87(2)(b) who does not reside at the apartment, left and called 911. Two officers from the 44th Precinct arrived and spoke to § 87(2)(b) who told them that the argument was solely verbal. Those officers left without entering the apartment and did not return. § 87(2)(b) returned to her kitchen and continued cooking. Approximately 20 minutes later, PO Garcia and PO Leone arrived. § 87(2)(b) § 87(2)(b) s cousin who lived in the apartment, answered the door.

PO Garcia and PO Leone asked § 87(2)(b) to have § 87(2)(b) come to the door to be placed under arrest for threatening § 87(2)(b) with a knife. § 87(2)(b)

§ 87(2)(b) who was seated at a dining table near the kitchen, saw and overheard § 87(2)(b) speaking to the officers at the front door. § 87(2)(b) called out that § 87(2)(b) was lying. She denied getting physical with § 87(2)(b) and denied threatening her with a knife. The officers asked § 87(2)(b) if they could come inside and speak to § 87(2)(b). § 87(2)(b) heard § 87(2)(b) say that PO Garcia could come inside, but that the other officers could not. PO Garcia entered the apartment and seconds later, numerous additional officers entered the apartment (**Board Review 14**). [A 50-H hearing was held in connection to this case § 87(2)(a) Gen.Mun. §50-H(3) § 87(2)(b) (**Board Review 15**).]

§ 87(2)(b) and § 87(2)(b)'s other sister, § 87(2)(b) (who also lived at the apartment and was present at the time of the incident), were uncooperative with the investigation (see IAs for contact attempts).

PO Leone (**Board Review 16**) and PO Garcia (**Board Review 17**) both said they responded to a radio run of a dispute involving a knife at § 87(2)(b)'s apartment. No further information was provided prior to their arrival. PO Leone said the officers arrived with a backup unit, though he could not recall who comprised the unit, while PO Garcia said he and PO Leone were the only officers present. PO Leone stated that the officers knocked on the apartment door and § 87(2)(b) answered. While they stood outside of the apartment, § 87(2)(b) confirmed that she had called 911, and said § 87(2)(b) was in the kitchen and had displayed a knife and threatened to kill her. § 87(2)(b) told the officers that she wanted § 87(2)(b) arrested. The officers asked if they could enter the apartment and § 87(2)(b) said, "Come in." PO Garcia stated that § 87(2)(b) was in the hallway outside of the apartment when this conversation occurred and that she opened the apartment door for him and PO Leone. PO Garcia could not recall if § 87(2)(b) used keys to open the apartment door but was certain she opened it for the officers. The officers then entered the apartment. PO Leone did not recall § 87(2)(b) specifying that only one officer could enter the apartment. He believed backup officers entered with him and PO Garcia, but he could not recall in which order the officers entered. Neither PO Leone nor PO Garcia recalled any discussion regarding whether § 87(2)(b) lived in the apartment, though PO Leone believed § 87(2)(b) may have mentioned living with § 87(2)(b).

Sgt. Burke said he arrived at the location and briefly spoke with § 87(2)(b) outside of the apartment though he could not recall what was said. Sgt. Burke entered the apartment and observed PO Garcia and PO Leone speaking to § 87(2)(b) in the kitchen area. Sgt. Burke was not present when PO Garcia and PO Leone entered the apartment and was unaware of how they gained entry (**Board Review 18**).

The BWC footage of this incident begins after PO Garcia and PO Leone already entered the apartment. Sgt. Burke's BWC footage begins with Sgt. Burke walking down the 15th floor hallway towards the apartment. PO Brady, PO Ferguson, and PO Marrero are standing outside the apartment. Sgt. Burke enters the apartment through the open front door and approaches PO Garcia and PO Leone, who are already inside speaking to § 87(2)(b). BWC footage from PO Brady, PO Ferguson, PO Morrero, PO Alvarado, and PO Castillo reveal that they enter

the apartment behind Sgt. Burke. § 87(2)(g)

The Complaint Report that was prepared in connection with this incident (**Board Review 19**), as well as Event documents (**Board Review 20**) confirm that § 87(2)(b) called 911 and reported that § 87(2)(b) had threatened her with a knife. Event documents reveal that PO Garcia and PO Leone arrived first on scene, followed approximately 14 minutes later by PO Brady and PO Ferguson, and then Sgt. Burke and PO Alvarado.

A request to the NYPD for a Consent to Search Form regarding this incident yielded negative results (**Board Review 21**).

Payton v. New York, 445 U.S. 573 states an entry to arrest and an entry to search for and to seize property implicate the same interest in preserving the privacy and sanctity of the home and justify the same level of constitutional protection (**Board Review 22**).

NYC Administrative Code, Section 14-173 outlines various provisions officers must adhere to when obtaining consent to conduct a search (**Board Review 23**).

- NYC Administrative Code 14-173(a)(1) – articulate, using plain and simple language delivered in a non-threatening manner, that the person who is the subject of the search is being asked to voluntarily, knowingly, and intelligently consent to the search, and explain that the search will not be conducted if the person refuses to consent to the search;
- NYC Administrative Code 14-173(a)(2) – must obtain consent without threats or promises of any kind being made to the individual;
- NYC Administrative Code 14-173(a)(3) – must affirm that the individual understands the information communicated as per Subsection (a)(1);
- NYC Administrative Code 14-173(a)(4) – must refrain from conducting such search where consent has not been obtained; and
- NYC Administrative Code 14-173(b)(2) – Regardless of the officer having a BWC, the officer must properly document the time, location, and date of such search and the apparent race/ethnicity, gender, age of the person who was the subject of the search and the officer’s name, precinct, and shield number.

§ 87(2)(g)

§ 87(2)(g)

Allegation E – Physical Force: Police Officer Brian Garcia used physical force against § 87(2)(b)

Allegation F – Physical Force: Police Officer Patrick Leone used physical force against § 87(2)(b)

Allegation G – Physical Force: Sergeant Timothy Burke tased § 87(2)(b)

BWC footage from Sgt. Burke (**Board Review 02**) depicts that at the 00:23 minute-mark of the media player timestamp, visible at the bottom of the screen, Sgt. Burke enters the apartment and walks through the kitchen, where there is a pot on the stove. Sgt. Burke continues through to the dining area where § 87(2)(b) is seated at a table grating cheese and speaking to PO Garcia and PO Leone. § 87(2)(b) refuses five orders from PO Leone and Sgt. Burke to stand up and repeatedly asks why. Sgt. Burke and PO Leone order § 87(2)(b) to accompany the officers out of the apartment. She says no.

At 01:15, PO Garcia grabs § 87(2)(b)'s left arm and PO Leone grabs her right arm. Multiple other officers enter the apartment. § 87(2)(b) repeatedly screams at the officers not to touch her. At 01:28, § 87(2)(b) is heard telling § 87(2)(b) to let go of the table as additional officers enter the apartment. PO Leone tells § 87(2)(b) that she is under arrest. § 87(2)(b) denies that she did anything wrong and continues refusing Sgt. Burke's orders to stand up. At 01:47, § 87(2)(b) leans forward and § 87(2)(b) who is standing in the living room, tells her to let go of the table. At 01:55, § 87(2)(b) falls backwards out of her chair while PO Garcia and PO Leone continue to hold onto her arms and lower her to the ground. § 87(2)(b) positioned on her back, pulls her arms together toward the front of her body and away from PO Garcia and PO Leone. Multiple officers join and attempt to pull her arms apart but are unable to do so. At 02:06, Sgt. Burke orders the officers to turn § 87(2)(b) onto her stomach, but they are unable to do so. At 02:12, Sgt. Burke orders the officers to stand back, yells "Taser," and tases § 87(2)(b)'s abdomen once from several feet away. The cycle can be heard for two to three seconds. The officers then handcuff § 87(2)(b) and lift her to her feet.

BWC footage from PO Garcia, PO Brady, and PO Alvarado capture different angles of the incident § 87(2)(g) (**Board Review 03, 04, 05**). In PO Garcia's BWC footage, at the 00:17- minute-mark of the media player timestamp, visible at the bottom of the screen, § 87(2)(b) is seen holding onto the bottom of the table. PO Brady's BWC footage depicts, at the 01:00-minute-mark of the media player timestamp, visible at the bottom of the screen, PO Brady attempting to pull § 87(2)(b)'s arm behind her back. PO Alvarado's BWC footage shows, at the 00:55-minute-mark of the media player timestamp, visible at the bottom of the screen, § 87(2)(b) kicking as PO Garcia, PO Leone, Sgt. Burke and PO Brady attempt to handcuff her. It is unclear if § 87(2)(b)'s feet make contact with any of the officers.

§ 87(2)(g)

§ 87(2)(b) denied holding a knife or any other utensil at the beginning of the incident. She said

PO Garcia handcuffed her right wrist and attempted to pull her out of the chair via his grasp on the loose handcuff. § 87(2)(b) ended up on her back on the floor, but she did not know how. On the floor, PO Garcia, PO Leone, and several other officers grabbed her arms and legs. § 87(2)(b) initially denied moving her body or resisting throughout this incident, but later acknowledged moving her hands back and forth while on the floor.

Sgt. Burke § 87(2)(g) said when he, PO Garcia, and PO Leone attempted to lift § 87(2)(b) out of her seat to handcuff her, she leaned backwards and fell onto the floor. The officers were unable to turn § 87(2)(b) over onto her stomach to handcuff her because she was pushing and shoving them, waving her hands and screaming. Sgt. Burke tased § 87(2)(b) and completed one cycle, after which, she became compliant and allowed herself to be handcuffed. Sgt. Burke's decision to tase § 87(2)(b) was based on the information that § 87(2)(b) had provided, which was that § 87(2)(b) had threatened her with a knife, in addition to § 87(2)(b)'s exhibited active resistance and the close proximity to a pot of boiling oil on the stove. Sgt. Burke did not recall observing a knife in the apartment.

PO Leone's and PO Garcia's statements were generally consistent with Sgt. Burke's and PO Garcia's BWC footage. PO Leone stated that when he and PO Garcia entered the apartment, § 87(2)(b) was chopping vegetables with a kitchen knife. PO Leone did not recall if a knife was recovered. PO Garcia did not observe a knife while he was inside the apartment.

The X26 Taser Data Sheet shows that § 87(2)(b) was tased once and that the cycle lasted for five seconds (**Board Review 24**). The Threat Injury and Resistance Worksheet prepared for her notes that Sgt. Burke tased her as a result of her holding onto a table, refusing to put her arms behind her back, and refusing to turn onto her side (**Board Review 25**). § 87(2)(b)'s medical records confirm that the prongs made contact with her abdomen (**Board Review 26**).

NYPD Patrol Guide, Procedure 221-01 states that force may be used when it is reasonable to ensure the safety of an officer or a third person, or otherwise protect life, or when it is reasonable to place a person in custody or prevent escape from custody. In all circumstances, any application or use of force must be reasonable under the circumstances (**Board Review 27**). NYPD Patrol Guide, Procedure 221-08 states that Conducted Electrical Weapons should only be used against persons who are actively resisting, against persons exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons present (**Board Review 28**).

§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)
§ 87(2)(g)

§ 87(2)(g)

[REDACTED]

§ 87(4-b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) [REDACTED] has been a party (Board Review 31).

- PO Garcia has been a member of service for seven years and has been a subject in two additional CCRB complaints comprised of a total of two allegations, neither of which were substantiated. § 87(2)(g)
- PO Leone has been a member of service for 20 years and this the first complaint in which he has been named a subject.
- Sgt. Burke has been a member of service for nine years and has been a subject in six additional CCRB complaints comprised of a total of 12 allegations, one of which was substantiated.
 - 201900739 involved a substantiated allegation of discourtesy against Sgt. Burke. The Board recommended Command Level 1 instructions, which the NYPD imposed.
 - § 87(2)(g)

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- § 87(2)(b) filed a Notice of Claim with the City of New York claiming personal, emotional and physical injuries, and she is seeking \$1,000,000 as redress (**Board Review 32**). The 50-H hearing was held on § 87(2)(b). A transcript of the hearing was received by the CCRB on November 25, 2020 (**Board Review 15**).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Squad No.: 13

Investigator:	_____	<u>Inv. Trevor Hackett</u>	<u>02/02/2021</u>
	Signature	Print Title & Name	Date
Squad Leader:	_____	<u>IM Laura Kastner</u>	<u>02/02/2021</u>
	Signature	Print Title & Name	Date